



**Marine
Resources
Advisory
Council**

BULLETIN

13 March 2012

Volume XXII, No. 2

Meeting of the Marine Resources Advisory Council

Robert Danielson

John Davi, Jr.

Melissa Dearborn

Paul Farnham

Thomas Jordan

Joseph Paradiso

John Renaldo

Paul Risi

Karen Rivara

Christopher Squeri

Charles Witek

Dean Yaxa

Chairman Wise started the meeting at 2:05 p.m. with introductions by all councilors present. This was the first meeting for newly-appointed Councilor Joseph D. Paradiso, who has filled the recreational fisheries seat previously occupied by James House. Chairman Wise welcomed Mr. Paradiso to the Council. As James Gilmore, Director of DEC's Bureau of Marine Resources, introduced himself, he noted the presence at the meeting of students enrolled in the fisheries management graduate course he teaches at Stony Brook University who came to witness fisheries management in action. Chairman Wise then went over the agenda. While waiting for a quorum of councilors to arrive, Mr. Wise moved items needing to be voted on until later in the meeting.

Public Comment Period

John German, commercial lobsterman, spoke on blackfish regulations. He noted that, in 2011, the Atlantic State Marine Fisheries Commission (ASMFC) mandated a 53% reduction in blackfish fishing mortality for 2012. In response, the Council recommended an increase in the minimum size limit in the commercial fishery from 14 inches to 15 inches, although the commercial harvest of blackfish had actually been below the allowable quota. Now, ASMFC has issued a new 2012 fishing mortality reduction on the fishery for blackfish in New York of 37%. In light of this, Mr. German would to see the current 14" minimum size limit retained in the commercial fishery. He commented that ASMFC should recognize it makes mistakes (which can mostly be blamed on faulty science) and it should realize these mistakes affect people's livelihoods.

Commercial hook & line fisherman John Mihale spoke about the current NYS commercial foodfish landing license. Anyone obtaining this license may legally fish in federal waters and land blackfish or other species for which they have permits providing they comply with commercial fishery minimum size and possession limits. If you form a corporation, you can even get a business food fish landing license and have multiple people fishing on your boat and when you're not able to fish, you could have someone fish in your place. By March 6th of this year, 35 new commercial foodfish landing licenses have been issued by DEC. New York's reported annual commercial landings of blackfish were 70,000 - 90,000 pounds from 2007 - 2010. Mr. Mihale believes that the addition of the 35 new landing licenses will increase New York's commercial blackfish landings dramatically. He argued for a modification of the landing

William Wise
Chairman

Kim Knoll
Staff Assistant

license that would specify what species of fish it covered and that blackfish should not be on that list.

Nancy Solomon of Long Island Traditions asked to make a few comments when the topic of the clamming closures comes up later in the meeting.

2012 Fluke, Scup and Black Sea Bass Recreational Fishery Regulations

Fluke/Summer Flounder

Mr. Gilmore reminded the Council that, in January, it had recommended the following measures for the 2012 recreational fluke fishery: minimum size of 19.5"; possession limit of 4 fish; open season of 01 May – 30 September. These measures are calculated to produce an increase in the fishing mortality rate in New York of 51% over 2011. He cautioned the Council that the new marine recreational fishing statistics survey, MRIP (Marine Recreational Information Program), will be introduced gradually in pieces; he is not sure when the data from MRIP will be put to use. Mr. Gilmore noted that, right now, the MRIP data suggest that recreational harvests of fluke in New York were higher than that suggested by the current survey, the Marine Recreational Fishing Statistics Survey (MRFSS). Mr. Marc Hoffman said he has learned that MRFSS data is still being used to determine the number of anglers and the number of recreational fishing trips.

Capt. Neal Delanoy stated that the recreational effort and catch data for fluke needs to be rectified at least as far back as 1997, the base year used in the current scheme to allocate allowable catch of fluke among East Coast states.

ASMFC Commissioner Pat Augustine reminded the Council that the current state fluke quotas have nothing to do with MRIP or MRFSS, they are tied to the reported size of the commercial fluke catch by each state in 1989 & 1990. These data were seen as more reliable than estimates of recreational harvests in that era.

Black Sea Bass

At its January 2012 meeting, the Council recommended that New York support a regional management approach for recreational black sea bass regulation in 2012. The region would include the states from New York to Massachusetts and sea bass regulations within the region would liberalize by 44% over 2011. While not mandatory, states in region will work to develop as consistent regulations as possible [proposed for the region in 2012: 12-fish bag limit, 13" minimum size (14" in MA), open season 01 July – 31 December (12 May – 27 October in MA)]. Supported as a second preference was a state-by-state approach under which New York's regulations might be liberalized by as much as 72%). Mr. Gilmore reported that, at the recent ASMFC meeting, neither option was chosen but, rather, an option creating regional management from New Jersey to Massachusetts with each state to develop regulations liberalizing their recreational sea bass fishery by 57%. While not mandatory, states in this region will work to develop as consistent regulations as possible.

Mr. John Maniscalco of the DEC continued, saying that the wave 6 (Nov/Dec) catch numbers from 2011 were high and the allowable liberalization was dropped to 41%. At the end of the day, these are the numbers for sea bass in 2012 in New York: 15-fish bag limit; 13" minimum size limit; open season 15 June – 31 December. The open season will be two weeks longer than originally planned. Mark Hoffman stated that the 13" minimum size limit will greatly increase discard mortality; many black sea bass are caught at some depth and the mortality of released fish is presumably high. Mr. Maniscalco replied that this was unfortunate but unless we close down the fishery for a time, there is no way

around it. Mr. Arnold Leo agreed, noting that Massachusetts lowered its minimum size on cod 19" because of concerns about discard mortality.

Mr. Gilmore wanted everyone to keep in mind that other states will be weighing in on this and this is a year-by-year decision with black sea bass. Right now the other four states in the region are in agreement but they are still waiting for New Jersey's decision. He also reminded folks that this is not final until it is approved by ASMFC. At that time, it will be promulgated by DEC via emergency rule-making.

Scup

Mr Maniscalco said the scup is also part of a 4-state region and New York was able to liberalize substantially for 2012. In 2012 for the **private angler**, there will be a 10.5" minimum size, a season of 01 May – 31 December and a 20-fish bag limit. For the **party and charter** boat angler, there will be a 11" minimum size, a regular season of 01 May – 31 August and 01 November – 31 December and a 20-fish bag limit. For "for-hire" anglers, there will be a bonus season of 01 September – 31 October with a 40-fish bag limit. Massachusetts has similar regulations but have a different size & bag limit (they opted for 45 fish for 45 days.) Once again, these measures are tentative until approved by ASMFC.

State Commercial Foodfish Landing License Issues

Mr. Wise reminded everyone of the alleged problems that are posed by the existence of the state commercial food fish landing license that would allow persons fishing in the EEZ to catch fish without a commercial fishing license but land them in New York. This has been raised principally as a potential problem in the blackfish fishery.

Mr. Wise questioned if anyone recalls the original purpose for which the landing license was created. Councilor John Davi recalled that it was created for offshore pot fisherman who were bringing in a blackfish by-catch and did not have a food fish license. Steve Heins of DEC said that he actually looked up the law – there was a commercial "Fishport" originally planned for Brooklyn's Erie Basin to attract boats from out of state. This landing license would allow them to legally land fish there. Emerson Hasbrook of Cornell Cooperative Extension believes there were a number of reasons for the creation of the landing license with Fishport being the chief one. This was a Port Authority project that received a great deal of money. John German said that the landing license began as a lobster license. Folks were fishing off shore from all different states but couldn't get a New York license which they wanted because lobsters were plentiful so they were issued a landing license. Originally, New York State residents were not eligible for the lobster landing license. He recalled a fisherman that wanted a landing license but could not get one because he was a State resident and he actually moved to Connecticut in order to receive one. He has no idea when things changed so that State residents are now eligible to receive this license.

Mr. Heins confirmed that there are actually two State landing licenses – one for lobster and one for food fish with lobster being the original one.

Mr. Wise questioned the Council -

1. Are the original purposes of the food fish landing license still valid or pertinent today?
2. Do the negative things that come about from having this license more than offset whatever positive aspects this license brings?

Councilor Tom Jordan believes this license is sorely abused but it still has a legitimate purpose. Instead of eliminating the foodfish landing license, he would like to look at it fishery-by-fishery and change it from a blanket license to a more specified one. He also noted that there aren't any qualifiers for this license.

Councilor Bob Danielson wondered what if you made the qualifier for this license the need to already possess a commercial foodfish license? We need to put the qualifier back into the law.

Mr. Davi doesn't understand how the recreational industry is getting away with abusing the system. If an individual does not have a foodfish license, he/she is not a commercial fisherman in New York State. Why is that person allowed to land the commercial limit of blackfish (25) rather than the recreational limit (3)? Mr. Wise said that the foodfish landing license was designed as a commercial license; the fact that it's providing an opportunity for some anglers to masquerade as commercial fishermen doesn't mean there still isn't a valid commercial purpose.

Councilor Paul Risi questioned if this problem wasn't specific to tautog; if so, the license should just exclude the landing of that species. Mr. Jordan said the problem was more widespread than that – it affects any quota-managed fish that is taken beyond three miles from shore. He suggested that an example of a legitimate use for a commercial foodfish landing license would be scup. The winter scup fishery is conducted strictly in federal waters (you must be federally licensed in order to participate). Depending on market and weather condition, winter scup fishermen will land fish anywhere along the coast because it doesn't count against any particular state quota assignment. The applicability of this landing license needs to be evaluated on a fishery-by-fishery basis.

There was much confusion surrounding the purposes of the foodfish landing vs commercial foodfish license. Mr. Heins clarified:

Landing license – this is not a license to fish, it is a license to land and sell. Generally, the possessor needs a corresponding license to fish in federal waters or in the waters of another state. The current alleged loophole strictly applies to fish that are not managed in federal waters and for which no permit is required. The license essentially allows you to land fish that you legally taken outside the waters of the state and sell them.

Foodfish license – this is a license to harvest and land fish under commercial regulations.

Chairman Wise asked if the DEC could identify who currently holds a foodfish landing license. Mr. Heins replied that, although this was originally created for non-residents, 51 out of 61 of the holders presently are residents.

The Council created a subcommittee to further investigate and make recommendations on adjustments to the commercial foodfish landing license. Members include Councilors Wise, Davi, Jordan, and Danielson as well as Mr. John Mihale and Mr. James Schneider.

Issues for the Council's Tautog Management Subcommittee

At its November 2011 meeting, the Council established its most recent subcommittee to investigate continuing management issues associated with blackfish (tautog), with Councilor Risi as Chairman. At the Council's January 2012 meeting, Mr. Wise distributed copies of the recommendations put forward by the previous tautog subcommittee. These had been adopted by the full Council and moved forward to DEC in 2007. He asked the Council to use these prior recommendations as a starting point to identify issues that the current subcommittee should take up.

In the ensuing discussion, the following topics were identified as one the new subcommittee should discuss:

- illegal commercialization/poaching
- establishing a recreational license for this species
- limits on the commercial pot fishery
- banning the possession of live blackfish
- prohibiting landing of commercial quantities of blackfish w/o possessing a foodfish license
- establishing a special commercial harvest permit *a/a* striped bass/summer flounder
- marketing/distribution issues
- enforcement issues

Chairman Wise asked the subcommittee to prepare an assessment of these and other issues the group thinks are important, along with recommendations to better address these issues. The report should be submitted by the Council's September 2012 meeting.

Temporary Emergency Closure of Shellfish Digging Waters in the Town of Hempstead

Mr. Gilmore provided background and rationale behind the recent action of DEC to decertify a large area of bay bottom within the Town of Hempstead for clamming. The U.S. Food and Drug Administration (FDA) recently recommended that the waters of the Town of Hempstead be closed to shellfishing until further notice because of findings by FDA and DEC laboratory evaluators that water quality data provided to DEC by the Town's laboratory are not reliable. FDA had advised DEC that failure to close the areas promptly could effectively prevent the sale of all New York state shellfish products in interstate commerce. Mr. Gilmore noted that the Department had been asked to take up the load of doing the water quality assessments within the Town of Hempstead while the Town reviewed and revised as necessary its procedures so as to requalify for certification. He stated that the Department wanted to help but that the personnel and non-personnel resources of its Shellfish Sanitation Unit were quite limited and this would not be the top priority the allocation of those resources. Mr. Bill Hastback of the Department's shellfish program estimated the number of diggers in this area at 15-20, likely none of them full-time.

Several members of the audience expressed concern about the economic and social impacts of this closure on the people and communities of the Hempstead Bay area. They urged the Department to all in its power to work with FDA and to help the Town get its laboratory and shellfish program re-certified. Mr. Gilmore said that the Department will do what it can given the limitations and other responsibilities that face it.

Revised 2012 Mortality Reduction on Tautog

As noted in the Public Comment section, above, for 2012, the reduction in fishing mortality required of the tautog fishery in New York State (from that in 2011) has been reduced from 53% to around 37%. The change is attributable to a mistake made in the most recent stock assessment for tautog. Mr. Gilmore stated that the Department is looking at the set of measures earlier recommended by the Council to achieve the higher reduction and where/how best to relax one or more of these to achieve what will be a lower target. They will be consulting with ASMFC in late March. Most of the feedback he has heard to date involves reducing the minimum size limit.

Mr. Gilmore hopes to be able to present any revisions to what had been proposed for tautog for 2012 at the Council's April meeting.

2012 Council Meeting Dates

The dates of the remaining regularly-scheduled meetings of the Council in calendar year 2012 are listed below. All meetings will take place at the DEC Offices located at 205 Belle Mead Road, East Setauket, NY 11733. The meetings generally take place at 2:00 p.m.; however, July's meeting will be at 7:00 p.m.

17 April
08 May
17 July 17 (7:00 p.m.)
18 September
13 November

17 April 2012 Council Meeting

The April Council meeting is primarily set aside for discussion of bills currently under consideration by the State legislature that involve or would affect New York's marine fisheries and/or its marine fisheries resources or marine environment, generally. The bills that will be taken up at the 17 April 2012 meeting will be posted on the Council's web page (<http://www.somas.stonybrook.edu/MRAC>) on Friday, 13 April 2012.

Check the Council's web page, <http://www.somas.stonybrook.edu/MRAC> for further agenda items. For further information about the Marine Resources Advisory Council or items covered in this bulletin, to make arrangements for addressing the Council on an agenda item, or to suggest an agenda item, contact: William Wise, Chairman, Marine Resources Advisory Council; PHONE: 631/632-8656 FAX: 631/632-9441; wwise@notes.cc.sunysb.edu.